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Town of Warren  
Development Review Board  
Findings of Fact and Notice of Decision  
#2014-07-CU/SD [formerly #2013-55-CU/SD] Sellers

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The applicant David Sellers proposes to separate the parcel on which his office is located from the parcel on which his single family dwelling is located. This request for separation of two pre-existing small lots is located at 40 Brook Rd. in the Warren Village Commercial District. Together, the properties, are .3 acres and identified as Warren Parcel Id. # 001000-400.

A duly warned hearing was held on Monday March 31, 2014 and attended by DRB members Lenord Robinson, Peter Monte, Bob Kaufmann, Jeff Schoellkopf and Virginia Roth. Others in attendance were Marilyn Miller, Sue Carter, David Sellers, Bobbi Rood, Mac Rood, Miron Malboeuf and Ruth Robbins. A second hearing was held on Monday April 21, 2014 and attended by DRB members Peter Monte, Chris Behn, Virginia Roth and Lenord Robinson. Others in attendance were Sue Carter, Marilyn Miller, Barry Simpson, Craig Klofach, David Sellers, Miron Malboeuf and Ruth Robbins.

**Findings of Fact and Conclusions of Law:**

1. The applicant submitted a complete application, recorded deeds for the subject properties, site plan showing the original two parcels, notice to abutters and proof of mailing. The properties were historically separate parcels owned by different parties until Mr. Sellers acquired the office property in 19 and the residence property in 1966.
2. After the first hearing an email [dated 4/1/14] by Mr. Monte, Chairman of the DRB, was issued to the board members and interested parties sharing the information he had come up with from his research and encouraging the applicant to have his own legal counsel provide an analysis of the issue.
3. An email by Attorney James Swift of Langrock, Sperry & Wool, LLP, was sent 4/21/2014, containing their legal opinion on the issue of dividing Mr. Seller's parcel back to the two original lots.
4. Currently both buildings have their own water supply from individual springs and are connected to the Municipal Wastewater System.
5. There is a right-of-way to the "barn" or Mr. Sellers' residence, which is located off of Flat Iron Road but it is not currently utilized as Mr. Sellers has a foot bridge over the brook to access his home from the Odd Fellows building.
6. The applicant told the Board that his reason for wanting to separate the two lots back to their original status was that he wanted to refinance his home and was unable to do so with both buildings showing they were on one parcel.
7. Although sharing a common boundary, Mr. Sellers' parcels are divided by Freeman Brook. This stream presents a physical barrier to unitary development of Mr. Sellers' parcels. In addition, the zoning mandated 50 foot setback from the stream is an additional barrier to the unitary development of the parcels.
8. The conclusion was reached by both researchers [Attorney Swift for the applicant and Mr. Monte, DRB Chairman] that the two lots did not lend themselves to being developed as one and

that precedent had been set as recently as 2008 in a case titled *In re. Jenness and Berrie, 185 VT 16 (2008)*.

**Notice of Decision:**

The Board finds that due to the separation of the two parcels by a large stream [the Freeman Brook] which is protected by 50 foot setbacks from the stream's top of bank, present practical barriers to it being considered as a single lot capable of development under a unitary plan and thus concludes that these lots were not merged by 24 VSA 4412(2) and 3.5.

**Development Review Board**

Peter Monte 6-2-14  
Peter Monte                      date

Lenord Robinson 6/2/14  
Lenord Robinson                      date

Virginia Roth 6-2-14  
Virginia Roth                      date

Chris Behn 06-02-2014  
Chris Behn                      date

TOWN OF WARREN, VT

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